



Comptroller General  
of the United States

Washington, D.C. 20548

## Decision

**Matter of:** Elsinore Aerospace Services, Inc.

**File:** B-239672.6

**Date:** April 12, 1991

Sam Z. Gdanski, Esq., for the protester.  
Raymond S.E. Pushkar, Esq., and Alison Doyle, Esq., McKenna & Cuneo, for Lockheed Aeromod Center, Inc., an interested party.  
Roger G. Lawrence, Esq., Department of the Navy, for the agency.  
Christina Sklarew, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

### DIGEST

Agency met requirement to conduct meaningful discussions where it directed protester to specific areas in which its proposal was deficient or noncompliant with mandatory solicitation requirements.

### DECISION

Elsinore Aerospace Services, Inc. protests the Navy's rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N68520-89-R-0029. Elsinore contends that the Navy failed to conduct meaningful discussions because it allegedly did not disclose the nature of the deficiencies in Elsinore's proposal in sufficient detail to enable the protester to correct them. Elsinore also protests the agency's award of the contract to a higher-priced offeror, asserting that it could not be justified on the basis of a cost/technical tradeoff decision.

We deny the protest.

The RFP, issued on September 29, 1989, required offerors to submit proposals for the labor, materials, and facilities needed to accomplish standard depot-level maintenance, periodic depot maintenance, and mid-term inspection of Navy and Air Force C-9 aircraft. The RFP solicited a firm, fixed-price requirements contract. Award was to be made on the basis of the proposal offering the best value to the government, price and other factors considered. The proposals were

to be evaluated on the basis of the following six areas: management/experience, production/facilities, quality, flight safety, industrial safety, and cost/price. These areas were listed in descending order of their importance for evaluation purposes, with the first three approximately equal in weight. The RFP advised offerors that an unsatisfactory rating in any of the five technical areas would render the proposal unsatisfactory overall. In addition, each proposal was to be rated as presenting low, medium, or high risk. Technical proposals were to be evaluated separately from cost proposals.

The Navy received seven proposals; the agency initially found all seven to be unacceptable but susceptible of being made acceptable, and requested additional information from each of the offerors. After the seven firms' responses were received, only two firms were found to be in the competitive range; Elsinore's proposal was evaluated as still unacceptable and was rejected. Another firm, Intertec Aviation, protested to our Office the agency's exclusion of its proposal from the competitive range, protesting that its proposal was capable of being made acceptable without major revisions.

We sustained the protest in Intertec Aviation, B-239672; B-239672.2, Sept. 19, 1990, 69 Comp. Gen. \_\_\_\_ (1990), 90-2 CPD ¶ 232, and recommended that the Navy reopen negotiations with Intertec included in the competitive range and then request a new round of best and final offers. In response to our recommendation, the Navy conducted additional written discussions with the two firms that originally had been included in the competitive range, Lockheed Aeromod Center, Inc. and Pemco Aeroplex Inc., as well as Elsinore and Intertec. Written discussion questions addressed to the firms were followed by oral discussions with each of these offerors, allowing the firms to ask for any clarifications they might need. A second round of BAFOs was requested on November 2, with a deadline for receipt by November 7.

The technical evaluation team (TET) reviewed Elsinore's proposal and rated it unacceptable based on deficiencies in three areas. Under industrial safety, Elsinore's proposal was found unacceptable for failing to meet facility fire protection requirements identified in the RFP. Under production/facilities, the agency concluded that Elsinore failed to propose a dedicated strip and paint facility as required by the RFP. Also, it found Elsinore proposed two engineers that did not satisfy RFP requirements. The TET recommended awarding the contract to Lockheed, whose proposal it found acceptable and whose risk factor it rated as low.

The source selection evaluation board (SSEB) agreed with the TET's evaluation of Elsinore's proposal as unacceptable. The

SSEB agreed that Lockheed should receive the award. The source selection authority reviewed the TET's and the SSEB's reports and recommendations and selected Lockheed's proposal as the one that represented the best overall value to the government. Award was made to Lockheed, and this protest followed.

Elsinore contends that the Navy's rejection of its proposal was based on different deficiencies than the ones that were raised during discussions, and concludes therefore that the agency failed to conduct meaningful discussions. In order for discussions in a negotiated procurement to be meaningful, contracting officials must advise offerors of the deficiencies in their proposals, to afford offerors an opportunity to revise their proposals to fully satisfy the government's requirements. Federal Acquisition Regulation (FAR) § 15.610; Violet Dock Port, Inc., B-231857.2, Mar. 22, 1989, 89-1 CPD ¶ 292. We think the agency met its obligation for meaningful discussions here.

In the area of management/experience, the RFP required that "assigned engineers have a minimum of a Bachelor of Science (BS) degree in Aeronautical/Aerospace (Preferred) or Mechanical Engineering from an accredited college or university and 5 years experience in aircraft structures, repair or design." No specific number of engineers was required; rather, the agency states that the size and structure of the engineering staff proposed was one of the competitive aspects of each proposal that would be comparatively graded by the technical team, along with education and experience.

In its initial proposal, Elsinore's proposed engineering staff included eight engineers. The protester's proposal provided resumes as evidence of their education and work experience. The Navy found that one employee held a degree in civil engineering, rather than the required aeronautical/aerospace engineering degree, and that one engineer lacked the minimum 5 years experience. In the initial request for additional information prior to Elsinore's exclusion from the competitive range, the Navy questioned the qualifications of the proposed engineering staff, although it did not name the staff members at issue. In the round of discussions which occurred in response to our recommendation the Navy requested evidence that the assigned engineers meet the minimum requirements for education and experience and requested an organizational chart reflecting on-site and off-site engineering staff. The agency report states that the deficiency was also raised during oral discussions.

In its BAFO, Elsinore included a certification to show that it had conducted a 5-year background check on the proposed

employees, and resumes indicating their qualifications. The resumes revealed, as before, that one engineer lacked the required type of engineering degree and another lacked the minimum amount of experience. The Navy found the proposed engineers to be deficient, and rated this area of the proposal unacceptable.

Elsinore concedes that the written discussion questions requested evidence of the firm's engineer's degrees and past experience, but argues that "Elsinore was led to believe that the purpose of this evidence was to show proof of our engineering degrees, and not to uncover problems with our engineers having the correct degrees." The protester also complains that the agency did not specifically name the engineers whose qualifications were at issue.

In our view, the agency's discussions with Elsinore were entirely adequate to give the firm notice of the deficiencies in this area of its proposal. Given that the protester was made aware of the degree and experience requirements first in the RFP, then in the Navy's initial request for information and finally through discussions prior to BAFO, we find the protester clearly and repeatedly was placed on notice of the need to have its proposed engineers meet these requirements. The Navy was not, in our view, required to name the individual employees and certainly this information was, or should have been, readily discernable to Elsinore.

In the area of industrial safety, the RFP required a description of the fire protection system and fire-fighting equipment for the offeror's facilities and referenced a Naval instruction as the applicable standard for aircraft hangars with which the proposed fire protection operation must comply. At issue here is a requirement for an aqueous film-forming foam (AFFF) fire-suppression system. In the initial request for information, Elsinore was asked generally to submit evidence of compliance with the requirement. In the round of written discussions, the Navy referred to the specific sections of the requirement including the AFFF fire-suppression system for which compliance was mandatory. In the oral discussions that followed, the record shows that Elsinore was again questioned about its ability to comply with the requirements for fire protection. In its BAFO, Elsinore referred to the Navy's request for a description of the fire suppression system and stated that the firm had "contracted for a fully-compliant system to be installed during the time the 1st C-9 aircraft are in the hangar." Elsinore also stated that the plumbing fixtures would be modified in each physical zone of the aircraft hangar for the AFFF system when a C-9 aircraft left the zone to be painted at a separate facility. The Navy, in our view, reasonably determined from this response that while Elsinore had plans to install an AFFF system during the

performance of the contract, it would not have the system in place when performance began.

It is apparent from Elsinore's response to the discussion question in this area that the protester was aware of the requirement but failed to satisfy it. Elsinore simply has not shown any inadequacy in the agency's discussions in relation to this area of the proposal.

In the area of production/facilities, the RFP required a detailed description of the paint facility that would be used for painting aircraft, and set forth various minimum requirements. Offerors were required to show that the proposed paint facility would have, by the time of first scheduled aircraft arrival, adequate capabilities to support the effort required by the RFP.

In its initial proposal, Elsinore indicated that it was in the process of constructing a new paint facility but that it would not be completed until December, 1991, approximately a year after performance was to begin under the contract. In the meantime, the firm proposed to lease a paint facility from Chrysler Technologies Airborne Systems, and submitted an agreement with Chrysler for the use of these facilities on a space-available basis. In both the initial request for additional information and in the discussion questions, the Navy asked for a full description of the paint facility that would be used, and asked the protester to identify any restrictions existing at the facility. In its BAFO, Elsinore provided further information about the facility it was planning to build and letters from Chrysler indicating that it could schedule Elsinore's use of the facility based on space available, with its own business taking priority.

The Navy considered the space-available contingency in the agreement with Chrysler to be a restriction of the facility, a view which we find completely reasonable. We find that the discussions in this area were entirely sufficient and should have made the agency's concerns clear to Elsinore. Furthermore, although the protester argues that the RFP only required offerors to provide their plan for meeting the requirement, we find that the language in the solicitation clearly requires evidence of the immediate ability to perform.

Elsinore also argues that it received a letter of commitment from Chrysler on November 16 "to negotiate a mutually acceptable schedule" for the use of the facility, once Elsinore had a firm commitment from the Navy, but that the Navy would not accept it. We point out that the closing date for receipt of BAFOs was November 7. FAR § 52.215-10, incorporated by reference in the RFP, specifically precludes the agency from accepting or considering any late submission

of this type which responds to a material RFP requirement. We think that it was entirely proper for the Navy to refuse to accept the late submission. In any case, the "commitment to negotiate" the use of Chrysler's facility "was subject to change based on [Chrysler's] business which must take priority," and thus does not meet the requirement for an in-place facility.

Elsinore claims, also, that it was misled by its inclusion in the reopening of the competition to believe that its proposal was technically acceptable and that whatever deficiencies had caused its exclusion from the competitive range initially had been resolved in its favor once it was requested to submit a BAFO. We point out, however, that inclusion in the competitive range merely indicates that any deficiencies remaining in the proposal are, in the agency's view, susceptible of correction. While the contracting officer is required to include in the competitive range all proposals that have a reasonable chance of being selected for award, see FAR § 15.609, once the offeror has been given the opportunity to submit a BAFO, the agency need not reopen discussions to resolve technical deficiencies remaining, or first introduced, in its BAFO. See IPEC Advanced Sys., B-232145, Oct. 20, 1988, 88-2 CPD ¶ 380.

Elsinore also argues, generally, that the agency was predisposed to award the contract to Lockheed and that it has given that firm's proposal disproportionate credit for certain alleged strengths. Similarly, Elsinore claims that no matter what technical strengths Lockheed's proposal may have offered, Elsinore's significantly lower price could not be ignored. In short, the protester contends that the Navy could not support its decision to award the contract to the higher-priced offeror by a rational cost/technical tradeoff.

The record amply supports the agency's finding that Elsinore's BAFO was unacceptable because it failed to meet material requirements for a paint facility, a fire suppression system, and engineers with requisite degrees and experience. A contracting agency is not required to consider a lower cost proposal in its award decision, where, as here, the proposal was reasonable judged technically unacceptable. See GLH, Inc., B-232156, Nov. 18, 1988, 88-2 CPD ¶ 490.

The protest is denied.



James F. Hinchman  
General Counsel